

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 162 of 1991

with

CIVIL REVISION APPLICATION No 163 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KHOJA MOHMADALI GULAM HUSEN

Versus

CHOWDHARY MURLIDHAR BHOLARAM

Appearance: (In both the matters)

MR YS MANKAD for Petitioner

MR CH VORA for Respondent No. 1, 2, 3, 4, 5, 6, 7, 8

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 31/01/2000

ORAL JUDGEMENT

1. The brief facts of the case are that the
plaintiff - petitioner, a decree holder, filed a civil

suit against the defendants- respondents being regular civil suit No. 60 of 1982 for possession of the suit property. This suit came to be compromised by the parties on 30th July, 1983. The compromise was that the defendants- respondents shall hand over the vacant possession of the suit property to the plaintiff petitioner within six years of settlement and for this period, the plaintiff petitioner will not charge from them any sum towards mesne profit. Accordingly a decree has been drawn. However, the defendant respondents have not stood to their promise and the petitioner has to file an application for execution of the decree and how this second litigation starts. What is said in 1930s by the Privy Council, that the real difficulty of a decree holder arises when he puts the decree in execution proved to be true in this case. The objections against the execution of the decree were filed by the son in law of the respondent No.2 and the respondents. The objections of defendants respondents were accepted whereas the objections of the son-in-law were rejected by the executing court in view of the acceptance of their objections. Hence, these two revision applications.

2. Learned counsel for the petitioner contended that the objections on the basis of which the decree was held to be not executable by the court below are wholly untenable. It has next been contended that the objections are not bonafide. It is contended that even if it is taken that the defendant No.4 has not signed the compromise but he has taken all the benefits of this decree for all these years without raising any objection. When the decree has been put in execution the judgment debtors filed objections which shows that these objections were nothing but only concocted objections. Carrying this contention further, learned counsel for the petitioner submitted that the respondent NO.4 has no independent right whatsoever in the suit property. He continues in occupation thereof as being the son of the respondent No.2. Lastly, it is submitted that the objections filed by the respondents were totally dishonest and fabricated one.

3. On the other hand, the counsel for the respondents relying on some decisions of different High courts and the Hon'ble Supreme Court contended that when the defendant NO.4 has not signed the compromise, the decree passed is wholly unjustified and could not have been executed. Lastly, it is contended that the objections filed by the son-in-law has been rejected only on he ground that the objections filed by other person have been accepted and in case ultimately this court

accepts that objections of the judgment debtors are not tenable, the matter re: son-in-law may be remanded.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

5. The suit had been filed in the year 1982 and the defendant No.4 was party to it. On being asked by the court, learned counsel for the respondents very fairly submitted that he is not in a position to say whether the defendant NO.4 filed his written statement or not in the suit. It is true that compromise was not signed by the defendant No.4 but only on this ground in the facts of this case it is very difficult to accept that he was not knowing about this compromise and that decree be held to be not executable. Compromise was made on 30th July, 1983 and under which six years time has been granted to defendants to hand over the suit property to the petitioner. Further plaintiff-petitioner has foregone the mesne profit for this long period of six years. In case the respondent NO.4 has any objection against this compromise in the matter or has any independent right in suit property why he has slept for all these six years. He could have raised objection immediately so that by 1989, the suit itself would have been disposed of. He waited for whole six years and took the benefits of decree and only when the same was put in execution, he raised the objection which is certainly a malafide one on his part. There are objections raised by none other than the judgment debtors for their own benefit. This is the position also with regard to the objections filed by the son-in-law of the respondent NO.2.

6. Another ground given by the Executing Court that power of attorney has been executed by the plaintiff petitioner may be doubtful. Even if it is taken to be correct, I fail to see how any benefit can be taken of it by the judgment debtors of the same. This grievance could have been made by the plaintiff and not by the judgment debtors. The court further held that the power of attorney is incomplete and therefore on this ground the compromise can be said to be technically defective. Even if it is taken to be correct of this defect the benefits cannot be given to judgment debtors. Both the ground given by the Executing Court for holding the decree not to be executable are wholly perverse. The substance of the matter and not technicality should have been considered by the court below. Even if the respondent NO.4 has not signed the compromise, in the facts of this case, it has to be presumed, assumed and accepted that he was knowing fully well of this

compromise and he has not objected to the same and only when full benefits have been enjoyed, to frustrate this decree, this objection has been raised. The court cannot permit the dishonest persons to be benefited on the basis of such objections. The courts are there to protect the honest persons. The court has to see that one may not take undue advantage of the legal position. Law is there to protect the rights of honest persons. Court may not encourage such type of dishonest objections by a person of the category to which the respondent NO.4 belongs. The respondent No.4 was not the only person in the suit. Other family members were party thereto. The father of the respondent No.4 has signed the compromise. It is true that he has not signed for respondent NO.4 but in the facts of this case it should have been taken to have known all these things by the respondent NO.4.

7. During the pendency of these revision applications, Chowdhary Murlidhar Bholaram has expired but his all legal heirs are already on record and as such only his name be deleted and accordingly it is deleted. Necessary correction may be made in the cause title of both these revision applications.

8. In this matter, during the course of the arguments, the court has given out that still if the respondents withdrew all their objections it may grant reasonable time to them to hand over the vacant possession of the suit property but the counsel after taking the instructions from the client stated that they want a decision of this court and not time. The order of the Executing court if allowed to stand will certainly occasion failure of justice to the plaintiff-petitioner as the decree which has been lawfully obtained in the year 1983 could not be executed for all these years only for the reason that the respondents are dishonestly acting. Otherwise also, on being asked by the court repeatedly, the counsel for the respondent No.4 has failed to show what independent right respondent No.4 has other than the son of late Chowdhary Murlidhar.

9. As a result of the aforesaid discussion, both these revision applications succeed and the same are allowed. The order of the learned court below is set aside. The objections filed against the execution of the decree are dismissed. The respondents are directed to pay costs of these revision applications to the petitioners which is quantified at Rs.1000/= per civil revision application. The respondents are further directed to pay mesne profit at the rate of Rs.300/-p.m. to the petitioner from 1-9-1989 till the date they hand

over the possession of the suit property to the petitioner. Rule is made absolute accordingly in both these revision applications.

zgs/-